

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE AUGUSTA, GA CODE, TITLE FOUR, BY ADDING A NEW ARTICLE TO BE DESIGNATED ARTICLE 7 AND NEW SECTIONS TO BE DESIGNATED SECTIONS 4-2-77 THROUGH 4-2-95; TO REPEAL AUGUSTA, GA CODE TITLE FOUR, SECTION 4-2-1; TO RESTRICT SMOKING AND THE USE OF E-CIGARETTES IN PUBLIC PLACES AND IN PLACES OF PUBLIC ACCOMMODATION; TO REPEAL ALL CODE SECTIONS AND ORDINANCES AND PARTS OF CODE SECTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the National Institute of Health's National Cancer Institute (the "NCI") has determined sixty-nine chemicals that cause cancer are found in secondhand smoke; that tobacco smoke is a major contributor to indoor air pollution; that secondhand smoke causes lung cancer in non-smokers; and that secondhand smoke has also been associated with heart disease in adults, sinus cancer, breast cancer in pre-menopausal women, low birth-weight babies, Sudden Infant Death Syndrome, infections, and asthma attacks in both children and adults. ["Americans for Nonsmokers' Rights" ("ANR"); *The Health Consequences of Exposure to Tobacco Smoke: Report of the Surgeon General...*National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006]; and

WHEREAS, scientific evidence has firmly established there is no safe level of exposure to second-hand tobacco smoke, a pollutant that causes serious illnesses in children and adults, and has also established the only effective way to protect the population from the harmful effects of second-hand smoke is to establish one hundred percent (100%) smoke-free environments [World Health Organization, "Protection from exposure to second-hand smoke: policy recommendations," *WHO*, 2007]; and

WHEREAS, during periods of active smoking in outdoor cafes and restaurants, outdoor tobacco smoke levels rivaled indoor tobacco smoke concentrations. In a study done in outdoor restaurants and bars in Athens, Georgia, it was found that nonsmokers who spent six hours in outdoor smoking sections experienced a significant increase in levels of cotinine (metabolized nicotine) when compared to the cotinine levels in smoke-free outdoor areas. [ANR, citing Hall, J. C. et al, "Assessment of exposure to secondhand smoke at outdoor bars and family

restaurants in Athens, Georgia, using salivary cotinine.“ *Journal of Occupational and Environmental Hygiene* 6(11): 698-704, Nov. 2009]; and,

WHEREAS, the Official Code of Georgia Annotated (“O.C.G.A.”) Title 31, *Health*, Chapter 12A, SMOKEFREE AIR, Section 31-12A-12, gives municipalities the authority to pass more restrictive, smoke-free ordinances than state law, as follows:

This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than this chapter or are not in direct conflict with this chapter.

WHEREAS, in *Horne v. the City of Cordele*, 254 Ga. 346, 348-49, 329 S.E.2d 134 (1985), the Georgia Supreme Court stated:

...a municipal corporation can not by ordinance provide for the punishment of an act which constitutes a criminal offense under the general law of the state, in the absence of express legislative authority conferring this power upon the municipality. *Moran v. Atlanta*, 102 Ga. 840, 30 S. E. 298 (1898)....The legislature can not delegate to a municipality the authority to punish in a municipal court a state offense as such. However, it may authorize the punishment of an act as a city offense that would also be a State offense, provided the terms of the act conferring the authority are clear and unequivocal and manifest a legislative intent to confer authority for the punishment of such act. [Cits. Omitted].

WHEREAS, O.C.G.A. § 16-12-2(a) legislates that if a person smokes tobacco “in violation of Chapter 12A of Title 31,” such person “shall be guilty of a misdemeanor and, if convicted, shall be punished by a fine of not less than \$100.00 nor more than \$500.00.”

Further, O.C.G.A. § 16-12-2(b), mirrors O.C.G.A. § 31-12A-12, stating:

This Code section shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules and regulations of state or local agencies, and local ordinances prohibiting smoking which are more restrictive than this Code section.

WHEREAS, pursuant to the above statutes, the General Assembly has given local governments the authority to pass ordinances prohibiting smoking tobacco in public places and the authority to enforce the ordinances in the courts; and

WHEREAS, several cities in Georgia, including Savannah, Athens-Clarke County, Decatur and Atlanta, have passed ordinances to declare their cities and local governments to be “Smoke-Free”; and

WHEREAS, all citizens of Augusta, Georgia and its visitors are entitled to breathe chemical-free air that has not been polluted by secondhand smoke.

THE AUGUSTA, GEORGIA COMMISSION ordains as follows:

SECTION 1. AUGUSTA, GA CODE, Title 4, Section 4-2-1 as set forth in the AUGUSTA, GA CODE, re-adopted July 10, 2007, is hereby amended by striking this section in its entirety as set forth in “Exhibit A” hereto. Section 4-2-1 shall be reserved.

SECTION 2. AUGUSTA, GA CODE, Title 4, is hereby amended to add new article to be designated Article 7 and new sections to be designated Sections 4-2-77 through 4-2-95 as set forth in “Exhibit B” hereto.

SECTION 3. This ordinance shall be effective thirty (30) days from and after the date of its adoption in accordance with applicable laws.

SECTION 4. All ordinances, parts of ordinances, policies, and procedures concerning events held on public property in conflict herewith are hereby repealed.

Adopted this _____ day of _____, 2011.

David S. Copenhaver
As its Mayor

Attest:

Lena J. Bonner, Clerk of Commission
Seal:

CERTIFICATION

The undersigned Clerk of Commission, Lena J. Bonner, hereby certifies that the foregoing Ordinance was duly adopted by the Augusta, Georgia Commission on _____, 2011 and that such Ordinance has not been modified or rescinded as of the date hereof and the undersigned further certifies that attached hereto is a true copy of the Ordinance which was approved and adopted in the foregoing meeting(s).

Lena J. Bonner, Clerk of Commission

Published in the Augusta Chronicle.

Date: _____

First Reading _____

Second Reading _____

Exhibit A

STRIKE:

~~Sec. 4-2-1. Smoking prohibited in Augusta-Richmond County buildings.~~

~~(a) Definitions. For purposes of this section, the following definitions shall apply:~~

~~(1) *Public building.* Any enclosed building, structure or indoor facility owned, operated, leased or managed by Augusta Richmond County which is used by or open to the public, including without limitation, public transportation, enclosed areas occupied by Augusta Richmond County staff, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception and waiting rooms, classrooms, meeting or conference rooms and auditoriums, on-site cafeterias, lunchrooms, lounges and any facility, school or educational institution being used by Augusta Richmond County for the purpose of providing classroom instruction.~~

~~(2) *Smoking.* Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.~~

~~(b) No person shall smoke in any public building as defined in this section.~~

~~(c) Nothing in this section shall be deemed, interpreted, or construed to permit smoking in any public place or area where smoking is prohibited or restricted by other applicable law.~~

~~(d) No Smoking signs with letters of not less than one (1) inch in height shall be conspicuously posted in every building, structure or facility where smoking is prohibited by this section by the operator, manager or other person having control of such building, structure, facility or other place.~~

~~(e) If any provision of this section or the application thereof to any person or circumstances are held to be invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provisions or application, and to this end, the provisions of this ordinance are severable.~~

~~(f) Any person or persons failing to comply with the lawful provisions hereof or doing any act prohibited hereby or failing to do any act mandated hereby shall be guilty of an offense, and upon trial as a misdemeanor and conviction shall be subject to the penalties provided by section 1-6-1.~~

REPLACE WITH:

Sec. 4-2-1. Reserved.

DRAFT

Exhibit B

ADD NEW:

ARTICLE 7. Smoking prohibitions in public places and places of employment.

Sec. 4-2-77. Purpose of Smoking Ordinance.

The purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 4-2-78. Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. “E-cigarette” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

- D. “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- E. “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. “Enclosed Area” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- G. “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. “Place of Employment” means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- I. “Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on Augusta, Georgia owned grounds.

- J. “Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- K. “Public building” Any enclosed building, structure or indoor facility owned, operated, leased or managed by Augusta, Georgia which is used by or open to the public, including without limitation, public transportation, enclosed areas occupied by Augusta, Georgia staff, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception and waiting rooms, classrooms, meeting or conference rooms and auditoriums, on-site cafeterias, lunchrooms and lounges.
- L. “Public Place” means an area to which the public is invited or in which the public is permitted, including but not limited to, all public buildings, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- M. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.
- N. “Service Line” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM

lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

- O. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- P. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- Q. “Sports Arena” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 4-2-79. Application of Article to Augusta, Georgia Owned Public Buildings, Facilities and Property.

All parks, recreation centers, public buildings, enclosed areas, including vehicles owned, leased, or operated by Augusta, Georgia, as well as all outdoor property adjacent to such buildings and under the control of Augusta, Georgia, shall be subject to the provisions of this Article.

Sec. 4-2-80. Prohibition of Smoking in Enclosed Public Buildings and Public Places.

Smoking shall be prohibited in all parks, recreation centers, public buildings and enclosed public places within Augusta, Georgia, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.

- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, owned by or under the authority of Augusta, Georgia, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail stores.

R. Rooms, chambers, places of meeting or public assembly, under the control of an agency, board, commission, committee or council of Augusta, Georgia, to the extent the place is subject to the jurisdiction of Augusta, Georgia.

S. Service lines.

T. Shopping malls.

U. Sports arenas, including enclosed places in outdoor arenas.

V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

W. Parks and recreation centers.

Sec. 4-2-81. Prohibition of Smoking in Enclosed Places of Employment.

A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 4-2-82. Prohibition of Smoking in Private Clubs.

Smoking shall be prohibited in all private clubs.

Sec. 4-2-83. Prohibition of Smoking in Enclosed Residential Facilities.

Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private rooms in nursing homes.

- B. All hotel and motel rooms that are rented to guests.

Sec. 4-2-84. Prohibition of Smoking in Outdoor Public Places.

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of not less than 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. On all outdoor property that is adjacent to buildings owned, leased, or operated by Augusta, Georgia and that is under the control of Augusta, Georgia.
- C. In, and within 20 feet of, outdoor seating or serving areas of restaurants and bars.
- D. In all parks and recreation centers, outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- E. In, and within 20 feet of, all outdoor playgrounds.
- F. In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of Augusta, Georgia.
- G. In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within 20 feet of the point of service.
- H. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be

located at least 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 4-2-85. Prohibition of Smoking in Outdoor Places of Employment.

- A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 4-2-86. Where Smoking Not Regulated.

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

Sec. 4-2-87. Declaration of Establishment or Outdoor Area as Nonsmoking.

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 4-2-88(A) is posted.

Sec. 4-2-88. Posting of Signs and Removal of Ashtrays.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.

- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 4-2-89. Nonretaliation; Nonwaiver of Rights.

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 4-2-91, violation of this Subsection shall be a misdemeanor, and upon conviction shall be subject to the penalties provided by section 1-6-1 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 4-2-90. Enforcement.

- A. This Article shall be enforced by the Augusta, Georgia Administrator or an authorized designee or any law enforcement officer of the Office of the Sheriff.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in Augusta, Georgia.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Augusta, Georgia Administrator or an

authorized designee or any law enforcement officer of the Office of the Sheriff.

- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the Department of Health or the Augusta, Georgia Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 4-2-91. Violations and Penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 4-2-89(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Augusta, Georgia Administrator by restraining order, preliminary and permanent injunction, or other means provided for by law, and Augusta, Georgia may take action to recover the costs of the nuisance abatement, including attorney's fees.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 4-2-91. Public Education.

Department of Health shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 4-2-92. Governmental Agency Cooperation.

The Augusta, Georgia Administrator shall annually request other governmental and educational agencies having facilities within Augusta, Georgia to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, Augusta, Georgia, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 4-2-93. Other Applicable Laws.

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 4-2-94. Liberal Construction.

This Article shall be liberally construed so as to further its purposes.

Sec. 4-2-95. Severability.

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.